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Paper No. 12

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AUG 27 2002

OFFICE OF PETITIONS

In re Application of  
Ronald J. Lebel et al  
Application No. 09/768,196  
Filed: January 22, 2001  
Attorney Docket No. 047711-0221

:DECISION GRANTING PETITION  
:UNDER 37 CFR 1.137(f) AND  
:NOTICE RESETTING PERIOD FOR  
:REPLY TO NONFINAL OFFICE  
:ACTION

This is a decision on the petition filed July 30, 2002, to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in a foreign country on July 20, 2001. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

- (1) the reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found in compliance with 37 CFR 1.137(f). However, while the statement of unintentional delay does not comply with the rule, the statement presented will be construed as meaning that "the entire delay in filing the required reply [Notice to Rescind Previous Nonpublication Request Under 35 U.S.C. § 122(b)(2)(B)(ii)] until the filing of a grantable petition was unintentional."

Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days as provided by 35 U.S.C. 122(b)(2)(B)(iii) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Corrected Filing Receipt which sets forth the projected publication date of November 28, 2002 accompanies this decision on petition.

The power of attorney submitted by facsimile transmission on August 22, 2002 has been made of record in the above-identified application file.

**There is no indication that a reply to the Non-Final Office action of July 9, 2002 has been filed. Accordingly, the period for reply to the Office action of July 9, 2002 is restarted with the mailing date of this decision. Extensions of time pursuant to the provisions of 37 CFR 1.136(a) are permitted. Failure to timely reply within the period restarted by this decision will result in the abandonment of this application.**

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

This application is being forwarded to Technology Center Art Unit 3763 to await a reply to the Non-Final Office action mailed July 9, 2002, the period of which is restarted to run from the mailing date of this decision on petition as noted above.



Frances Hicks

Lead Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner  
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

# FAX TRANSMISSION

U.S. PATENT AND TRADEMARK OFFICE  
Office of Petitions  
Assistant Commissioner for Patents, Box DAC  
Washington, DC 20231  
(703) 305-8859  
**Fax: (703) 308-6916**

**To:** Ted R. Rittmaster                      **Date:** August 21, 2002  
**Fax #:** 1-310-557-8475                      **Pages:** 1, including this cover sheet.  
**From:** Karen Creasy  
**Subject:** Application No. 09/768,196 Dkt. No. 047711-0221

## COMMENTS:

Thank you for your petition, filed July 30, 2002, requesting revival of the above-identified application under the provisions of 37 CFR 1.137(f).

The petition fails to state the date of the foreign filing, which is important in making a proper decision on the petition. Therefore, could you please do a short supplemental statement setting forth the date of the foreign filing.

In order to expedite processing of the petition, please transmit the statement by facsimile to the number indicated above and to my attention. Should you have any further questions concerning this matter, please feel free to contact me at the above telephone number.

Thank you for your patience in this matter.